

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

|                          |   |                          |
|--------------------------|---|--------------------------|
| WHITNEY NATIONAL BANK,   | ) |                          |
|                          | ) |                          |
| Plaintiff,               | ) |                          |
|                          | ) |                          |
| v.                       | ) | Case No. 2:07-CV-414-MEF |
|                          | ) |                          |
| SAFETY GUIDE OF ALABAMA  | ) |                          |
| LLC and THOMAS J. MILLS, | ) |                          |
|                          | ) |                          |
| Defendants.              | ) |                          |

**MOTION FOR LEAVE TO AMEND**

Whitney National Bank (“Whitney Bank”) hereby files this motion for leave to amend its complaint, such that it may file the attached Amended Complaint. As grounds for this motion, Whitney states:

1. This amended complaint will more specifically describe Whitney Bank’s claims and legal theories against Thomas J. Mills. Because of the bankruptcy stay applicable to Safety Guide of Alabama, LLC (“Safety Guide”), this amended complaint takes no action whatsoever with regard to Safety Guide.

2. This amended complaint revises Count II against Mr. Mills and adds Count III and IV and otherwise incorporates by reference the original complaint.

3. This motion is filed within the time provided under the existing scheduling order (which provides for such amendments through October 25, 2007).

4. This amendment provides better notice to Mr. Mills of the claims against him and no prejudice shall result from said amendment.

WHEREFORE, PREMISES CONSIDERED, Whitney Bank respectfully moves this Honorable Court to grant it leave to amend its complaint.

/s/ Gregory C. Cook  
One of the Attorneys for Plaintiff  
Whitney National Bank

**OF COUNSEL:**

Gregory C. Cook  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of October, 2007, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the person whose address is listed below, and/or via first-class United States mail, postage prepaid, as indicated by the Court's notice:

Jack B. Hinton, Jr.  
Gidiere, Hinton, Herndon & Christman  
904 Regions Tower  
60 Commerce Street  
Montgomery, Alabama 36104  
*Attorney for Defendant Thomas J. Mills*

/s/ Gregory C. Cook  
Of Counsel

# Attachment

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| SAFETY GUIDE OF ALABAMA  | ) |                          |
| LLC and THOMAS J. MILLS, | ) |                          |
|                          | ) |                          |
| Defendants.              | ) |                          |

**AMENDED COMPLAINT**

Comes now Whitney National Bank (hereinafter “Whitney Bank”) and amends its claim against Thomas J. Mills. Because of the bankruptcy stay applicable to Safety Guide of Alabama LLC (“Safety Guide”), Whitney Bank does not take any action with regard to Safety Guide. Whitney Bank amends only the counts applicable to Mills by restating Count II and adding Count III and Count IV and otherwise incorporating by reference the remainder of the original complaint. Count II, III and IV shall now read:

**COUNT II: CLAIM AGAINST MILLS UNDER ALA. CODE § 6-5-285**

17. Whitney Bank incorporates in this Count all prior paragraphs of the complaint.

18. Upon information and belief, Michael Marcato and/or Highway Solutions may claim that the making of such \$150,000 check was unauthorized or

was not done by himself but was instead made by Mr. Mills. If this is correct, Mr. Mills is liable under Ala. Code § 6-5-285 for having made such check.

19. Further, on or about March 12, 2007, Mr. Mills uttered and/or delivered such check for \$150,000 to Whitney Bank. Therefore he is also liable for uttering and/or delivering such check even if he did not make the check under Ala. Code § 6-5-285.

20. Such check was, and is, worthless as that term is used under Ala. Code § 6-5-285.

21. Whitney Bank is a holder of such check under Ala. Code § 6-5-285.

WHEREFORE Whitney Bank claims against Thomas J. Mills for both punitive and compensatory damages, including a reasonable attorney fee, pursuant to Ala. Code § 6-5-285.

**COUNT III: CLAIM AGAINST MILLS UNDER ALA. CODE § 7-3-415**

22. Whitney Bank incorporates in this Count all prior paragraphs of the complaint.

23. Thomas J. Mills indorsed such \$150,000 check and deposited such check at Whitney Bank on or about March 12, 2007.

24. Ala. Code § 7-3-415 requires him to pay the amount due on the instrument to Whitney Bank “according to the terms of the instrument at the time it was indorsed.”

WHEREFORE, Whitney Bank demands judgment against Thomas J. Mills in the amount of \$150,000, plus a reasonable attorney fee, interest, and costs of suit.

**COUNT IV: FRAUD AND/OR SUPPRESSION**  
**AGAINST THOMAS J. MILLS**

23. Whitney Bank incorporates in this Count all prior paragraphs of the complaint.

24. To the extent that Thomas J. Mills did sign such \$150,000 check, he has made a false statement, knowing of the falsity of such statement. Further, Mr. Mills deposited said check, and completed the deposit slip for such deposit, again with knowledge that such statements were false (or, in the alternative, with wanton, reckless, negligent or innocent intent). Mr. Mills assured Whitney Bank about the funds in the account for the \$150,000 check.

25. Furthermore, Mr. Mills failed to disclose the fact that such check was worthless and that it had been made, uttered and deposited with not sufficient funds being present in said account and that no further funds were forthcoming and that checks were being written or debited against the Whitney Bank account to withdraw said funds. Mr. Mills has a duty to disclose such facts because of the earlier statements he had made, the relationship of the parties and the particular circumstances.

26. Whitney Bank relied upon these false statements and these suppressions and omissions and credited money to said account and paid checks that were presented to such account and did not close such account at that time. Such reliance was reasonable.

27. Whitney Bank has been proximately damaged by such fraud and suppression.

WHEREFORE, Whitney Bank demands judgment against Thomas J. Mills in the amount of \$150,000, plus appropriate punitive damages, interest, and costs of suit.

/s/ Gregory C. Cook  
One of the Attorneys for Plaintiff  
Whitney National Bank

**OF COUNSEL:**

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